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Report of the Secretary-General on the protection of civilians in armed conflict

I. Introduction

1. The present sixth report on the protection of civilians in armed conflict is submitted in accordance with Security Council resolutions 1674 (2006) and 1738 (2006). Resolution 1674 (2006) marked a watershed in the protection of civilians by providing a clear framework for action by the Council and the United Nations in this area — action that is as critical and necessary today as it was eight years ago, when the Council considered the first report on the protection of civilians.

2. The present report provides an update on progress made in implementing resolution 1674 (2006) and strengthening the framework for the protection of civilians elaborated by the Council and other partners in recent years. It takes stock of positive developments and ongoing or new concerns that affect civilians in conflict situations around the world. In doing so, it highlights four challenges of particular importance to us all: the denial of life-saving access to civilians in need; the abhorrent practice of sexual violence in conflicts and its devastating impact on individuals and communities; the critical need to address more consistently the impact of conflict on housing, land and property; and the importance of eliminating the unacceptable humanitarian toll of cluster munitions. The report ends by proposing a set of key actions for the Security Council's consideration, all aimed at further strengthening the protection framework in areas that require more prompt and systematic action.

3. My visits to a number of conflict-affected countries have convinced me that for those displaced and victimized by war, our actions matter far more than our words. Their plight has left me with a deep sense of responsibility to ensure that where we cannot prevent armed conflict, the protection of civilians is, and must remain, an absolute priority: for me, as Secretary-General, for the United Nations, for the Security Council and, above all, for the Member States, with which the primary responsibility for protecting civilians lies. Enshrined in all major moral, religious, and legal codes, and not specific to any particular culture or tradition, the protection of civilians is a human, political and legal imperative that recognizes the inherent dignity and worth of every human being. It is a cause that unites us all in the responsibility to protect civilians from abuse, to mitigate the impact of warfare and to alleviate their suffering.

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II. The nature of contemporary armed conflicts

4. Although there has been a decline in the number of conflicts around the world,[1] in those, predominantly non-international, conflicts that simmer or rage, large numbers of civilians remain at risk of, or suffer, brutality and degradation. Some are simply in the wrong place at the wrong time. Others are deliberately targeted and subjected to atrocities in an environment of almost total impunity.

5. For 35 million people, flight has become the only option. Displacement, therefore, continues to be one of the principal features of contemporary conflict and arguably the most significant humanitarian challenge that we face. But often it is only the beginning of an ordeal that may last for years or even decades, marked by suffering, deprivation and a daily fight for survival. In many cases it leads to the permanent loss of livelihoods, opportunities and cultural identity. The world's refugee population stands at 9.9 million, the highest it has been in four years. The increase stems largely from the deteriorating security and humanitarian situation in Iraq, which has forced well over 2 million people to seek refuge abroad.

6. These numbers are in addition to an estimated global population of 24.5 million persons internally displaced by conflict. In Iraq, there are some 2.2 million internally displaced that we know of. In the Sudan, although approximately 1 million have returned to the south of the country this year, insecurity in Darfur has resulted in 240,000 newly displaced, making a total of 2.2 million internally displaced in Darfur alone. Some 242,000 people have fled Darfur for the Central African Republic and Chad, neighbouring countries that also have large internally displaced populations, 300,000 and 170,000, respectively. In Somalia, some 700,000 remain internally displaced, while in the Democratic Republic of the Congo, recurrent fighting has forced over 500,000 people from their homes this year, bringing the total displaced population to over 1.2 million. In Colombia, 20,000 civilians have been displaced by non-State armed groups. Overall, there are 2.1 million registered internally displaced persons in Colombia, though some estimate the total at 3 million. In Afghanistan, violence and insecurity have resulted in renewed and increasing displacement, particularly in the southern provinces, with some 44,000 people displaced during the first half of 2007. Violence in Sri Lanka has displaced 100,000 people so far this year, particularly in the north and east of the country, though some 120,000 have been able to return to their homes in the east since May, following a decrease in hostilities.

7. The majority of conflicts today continue to be non-international. While such conflicts have always been marked by an imbalance in the military capacity of the warring parties, this asymmetry has become increasingly pronounced in a number of conflicts in recent years, most notably in the occupied Palestinian territory, but also in Afghanistan and Iraq, where national and multinational forces are fighting a variety of armed groups. In such conflicts, to overcome their inferiority in conventional military strength, militarily weaker parties have resorted to strategies that flagrantly violate international humanitarian law, such as deliberate attacks against civilians, including suicide bombings, as well as hostage-taking and intentional placement of combatants and other military objectives amid civilian infrastructure. Such acts are inexcusable violations of international humanitarian

[1] In 2006, there were 17 major armed conflicts in 16 locations, compared to 19 in 17 locations in 2004. Stockholm International Peace Research Institute, *SIPRI Yearbook 2007*.

law of which civilians bear the brunt. There is also a risk that in fighting an enemy that is difficult, if not impossible, to identify, militarily superior parties may increasingly respond with methods and means of warfare that violate the principles of distinction and proportionality, of which civilians, again, bear the brunt.

8. A further feature of contemporary conflicts is the counter-terrorism operations by which States strive to prevent and respond to acts of violence by transnational armed groups. While recognizing States' inherent right to protect themselves and those within their jurisdiction, it is essential that all aspects of such operations, be it the use of force or deprivation of liberty, be carried out in full compliance with applicable international law.

9. Another prominent feature is the contracting out of functions traditionally performed by States' security or military apparatuses to private military and security companies. In Iraq, for example, in March 2006, there were an estimated 181 such companies, with 48,000 employees, undertaking functions for multinational forces.[2] Activities undertaken by private military and security companies include the protection of personnel and assets, interrogation of prisoners and even participation in combat operations — activities that often put the employees of such companies in direct contact with the civilian population. It is well established that the employees of private military and security companies must comply with international humanitarian law. The responsibilities of the States that hire them are also well established. However, far more needs to be done to promote compliance with the law and the accountability of employees and hiring States for any violations thereof. In this respect, I welcome the initiative of the Government of Switzerland, in cooperation with the International Committee of the Red Cross, to foster intergovernmental discussion on the issues raised in relation to private military and security companies and to study and develop good practices, regulatory models and other appropriate measures to promote respect for international humanitarian law and human rights law.

III. Protecting civilians in armed conflict: progress and concerns

10. Much has been achieved in recent years towards strengthening the protection of civilians in armed conflict, including the acceptance of the responsibility to protect; increased engagement of the Council on issues relating to the protection of civilians; more regular inclusion of activities in support of protection of civilians in peacekeeping mandates; investment in strengthening the United Nations peace mediation capacity; improved coordination of protection activities among humanitarian actors; and increased momentum at the international and national levels towards combating impunity for war crimes and crimes against humanity. Considerable challenges remain, however, challenges that underline the fact that progress in protecting civilians is measured by what happens on the ground.

[2] United States Government Accountability Office, *Rebuilding Iraq — Actions Still Needed to Improve the Use of Private Security Providers*, statement of William Solis, Director, Defense Capabilities and Management, June 2006.

A. Encouraging developments

Advances in the normative framework

11. Of particular significance was the acceptance by all Member States at the 2005 World Summit of a fundamental "responsibility to protect". This represents a critically important affirmation of the primary responsibility of each State to protect its citizens and persons within its jurisdiction from genocide, war crimes, ethnic cleansing and crimes against humanity. Importantly, paragraphs 138 and 139 of the World Summit Outcome also place a responsibility upon the United Nations, including the Security Council, to support Member States in protecting their populations. This is a cardinal achievement and must result in earlier and more decisive action to prevent or mitigate the suffering of civilians in conflict areas. My Special Representative on the Prevention of Genocide and Mass Atrocities will contribute significantly to those ends.

12. Since the issuance of my last report (S/2005/740), the Security Council has also taken important steps to reinforce the normative and operational framework for the protection of civilians, including through the adoption of resolutions 1674 (2006) and 1738 (2006). The former is of particular importance in elaborating a framework for action that provides for:

(a) Inclusion in the mandates of United Nations peacekeeping missions, where appropriate and on a case-by-case basis, of provisions for:

(i) The protection of civilians under imminent threat of physical danger;

(ii) Preventing and responding to sexual violence;

(iii) Facilitating the delivery of humanitarian assistance;

(iv) Ensuring security in and around camps for refugees and the internally displaced;

(v) The creation of conditions conducive to their voluntary and safe return;

(b) The Council's continued collaboration with the Emergency Relief Coordinator and the latter's full association from the earliest stages of planning of United Nations peacekeeping and other relevant missions;

(c) Referral to the Council of relevant information and analysis regarding the protection of civilians.

More active role for peacekeepers

13. The Security Council has increasingly mandated peacekeeping operations to undertake activities in support of the protection of civilians, as demonstrated recently with the African Union-United Nations Hybrid Operation in Darfur, which is authorized to take the necessary action, in the areas of deployment of its forces and as it deems within its capabilities, to protect civilians (resolution 1769 (2007)). This was followed in September 2007 by the establishment of the United Nations Mission in the Central African Republic and Chad, with an express mandate to protect civilians with the support of the European Union operation. The Council also endorsed a policing concept aimed at ensuring the provision of law and order in refugee camps and sites with internally displaced persons in Chad (resolution 1778 (2007)).

14. While those missions are in their early stages, the activities of the United Nations Organization Mission in the Democratic Republic of the Congo underline the critical role that peacekeepers can play in protecting civilians, through a concept of operations that prioritizes the provision of security by a deterrent military presence and direct involvement to prevent and end violations of human rights and humanitarian law, but also the limitations of such a role. Similarly, troops of the African Union Mission in the Sudan (AMIS) have striven to provide some protection to displaced and other vulnerable people in Darfur. Those efforts have been undertaken in the face of serious capacity and security constraints, underlined by the outrageous killing in September 2007 of 10 AMIS personnel in a brutal attack by a rebel militia.

15. Though increasing resort to such mandates is positive, it is only a first step towards strengthening the protection of civilians by peacekeeping missions. Eight years on from the first such mandate, the Office for the Coordination of Humanitarian Affairs and the Department of Peacekeeping Operations are conducting a joint study to examine the integration of such mandates into peacekeeping missions and their impact on the ground, to draw lessons for future mandates and deployments.

Enhanced role for regional organizations

16. The important role of regional organizations in the protection of civilians was recognized by Member States during the Council's debate on the protection of civilians in June 2007 and was the focus of a meeting organized by the Office for the Coordination of Humanitarian Affairs in Dakar in April 2007, as part of the United Nations high-level meeting process. Participants included senior officials from the African Union, the Economic Community of West African States, the Organization of the Islamic Conference, the League of Arab States and other regional organizations. A key outcome was agreement on the need for regional and subregional organizations to build constituencies around, and develop policies on, the protection of civilians — a process that the Office for the Coordination of Humanitarian Affairs is currently facilitating. Similar events are planned for other regions. I encourage regional organizations to remain engaged in this process, with a view to realizing their potential to address protection concerns through their mediation, conflict resolution and, where applicable, peacekeeping activities.

Combating impunity

17. Since the issuance of my last report, there have also been critical developments in extending the reach of international justice, particularly through the work of the International Criminal Court. In addition to the warrants issued in July 2005 for the arrest of four members of the Lord's Resistance Army in Uganda, in February 2006 the Court issued an arrest warrant for the alleged recruitment or use of children under 15 years of age to participate in hostilities in the Democratic Republic of the Congo. The accused was arrested and handed over to the Court the following month. A second suspect from the Democratic Republic of the Congo was handed over to the Court in October 2007, in relation to alleged war crimes and crimes against humanity, including murder and sexual enslavement.

18. In April 2007, the Court issued two arrest warrants for war crimes and crimes against humanity allegedly committed in Darfur, including murder, attacks against

civilians and destruction of property. I urge the Government of the Sudan to take immediate steps to surrender to the Court the accused, one of whom is the State Minister for Humanitarian Affairs of the Sudan. The following month, the Prosecutor launched an investigation into the situation in the Central African Republic, in particular into allegations of rape and other acts of sexual violence.

19. These are critical developments in terms of ending the impunity that underlies and perpetuates so many abuses. Where we are unable to prevent such abuses we must at the very least ensure that their perpetrators, and those who bear political responsibility for violence against civilians, are held accountable for their actions. I call on all Member States to cooperate fully with the International Criminal Court, and other international mechanisms addressing genocide, war crimes and crimes against humanity, and for the Council to take appropriate steps to encourage and facilitate such cooperation when it is not otherwise forthcoming.

B. Issues of concern

20. The developments described above help to build an environment that is increasingly disposed, though not yet predisposed, to the protection of civilians in armed conflict. However, they still stand in stark contrast to today's reality: that in conflicts around the world, civilians continue to be killed, maimed, raped, displaced and unable to meet their basic needs. There are many important issues involved. In the present report, I want to draw particular attention to those set out below, either because of their increased prevalence in contemporary armed conflicts, their pressing nature or their profoundly worrying implications for respect for international humanitarian law.

Conduct of hostilities: further erosion of the principles of distinction and proportionality

21. The first issue is the further erosion of the principles of distinction and proportionality. The principle of distinction requires belligerents to distinguish at all times between combatants and civilians and to direct attacks only against combatants and other military objectives. In accordance with the principle of proportionality, deaths of, or injuries to, civilians and damage to civilian objects must not be excessive in relation to the direct and concrete military advantage expected from the attack. On a number of occasions in recent and ongoing conflicts, we have witnessed intentional targeting of civilians and also a tendency to interpret the principle of proportionality in a way that leads to an unjustified and troubling expansion of what constitutes permissible civilian casualties.

22. Deliberate targeting of civilians has become more widespread in places such as Afghanistan, the Democratic Republic of the Congo, Iraq, Somalia and the Sudan, creating a climate of fear aimed at destabilizing and displacing civilian populations. A particularly worrying trend is the increasing resort to suicide attacks in places including Afghanistan, Iraq, Israel and Somalia. In some cases, such attacks are aimed at military objectives but result in civilian casualties because of the inherently indiscriminate form of attack. In many others, attacks are deliberately perpetrated against civilians and civilian objects. Such attacks are most common in public places: places of worship, market squares and civilian areas where people gather in the normal course of their lives and where there is no military advantage to be

gained. The inevitable result is carnage among civilians and a pervading sense of insecurity, severely disrupting public life. In Iraq, over 700 civilians were killed and more than 1,200 injured in suicide attacks in just the first three months of 2007.[3] In one particularly deadly incident, in August 2007, suicide bombers attacked compounds inhabited by the minority Yazidi sect in Sinjar, in northern Iraq, killing over 430 civilians and wounding more than 500. In Afghanistan, the number of suicide attacks increased from 17 in 2005 to 123 in 2006, killing 237 civilians and injuring 624.[4]

23. Also of concern are incidental civilian casualties resulting from military operations conducted against non-State armed groups in places such as Somalia, Iraq and Afghanistan. In Somalia, in response to attacks from anti-Government forces, Government and Ethiopian troops on occasion used heavy force and heavy weapons in civilian areas. Information from Mogadishu's main surgical hospitals indicates that 3,200 civilians suffered weapons-related injuries between January and July 2007, including over 1,000 women and children. In Iraq, between April and July of this year, 88 civilians were killed during air strikes conducted by multinational forces in Iraq. Requests by the United Nations Assistance Mission in Iraq for information on the outcome of investigations by multinational forces into such incidents have largely gone unanswered.

24. In Afghanistan, civilian casualties have been caused by aerial bombardments and ground attacks as a result of imprecise targeting or mistaken identity, in some cases provoking expressions of concern from the Government. The Afghan Human Rights Commission claims that over 75 civilians were killed during air strikes and ground operations in September 2007 alone. It is critical that Afghan and multinational forces exercise increased care in the conduct of their operations to avoid civilian casualties. Unfortunately, in many instances security conditions limit the ability of the United Nations Assistance Mission in Afghanistan (UNAMA) to carry out independent verification of incidents involving civilian casualties, though its efforts to underline the importance of this have gained increasing traction. The leadership of the multinational forces agreed, at a United Nations-sponsored meeting on the protection of civilians, in Kabul in August 2007, to facilitate information-sharing with UNAMA and has announced concrete measures to reduce civilian casualties. After-action reviews will also be conducted in cooperation with the Government of Afghanistan in cases where civilian casualties may have occurred.

25. As a standard practice, the Security Council should make every effort to call upon parties to conflict, and multinational forces that it has authorized, to uphold their international humanitarian law and human rights obligations. In this regard, I welcome the Council's call in resolution 1776 (2007), by which it renewed the mandate of the International Security Assistance Force (ISAF) in Afghanistan, for all feasible steps to be taken to ensure that civilian life is protected and international humanitarian law and human rights law are upheld. I would urge the leadership of ISAF, as well as that of the multinational forces in Iraq, to provide specific information on steps taken to ensure the protection of civilians during the conduct of

[3] United Nations Assistance Mission for Iraq, human rights report for the period 1 January-31 March 2007.

[4] A/HRC/4/98, para. 25.

hostilities in their quarterly reports to the Council requested by resolutions 1776 (2007) and 1723 (2006), respectively.

26. At a more doctrinal level, there is increasing concern that in applying the principle of proportionality, belligerents are adopting an overly broad interpretation of what constitutes a concrete and direct military advantage and, consequently, of what may be considered permissible levels of incidental civilian casualties, particularly in the context of aerial warfare. Instead of taking into account, as envisaged by international humanitarian law, only military advantages that are substantial and a fairly immediate consequence of a specific attack, there has been a tendency to balance civilian casualties against military advantages that are hardly perceptible or may arise only in the longer term or as a result of the overall military campaign. This tendency was evident, for example, in the Government of Israel's justification for civilian casualties resulting from its military campaign against Hizbullah in 2006,[5] a campaign that was subsequently determined by the Commission of Inquiry on Lebanon (established pursuant to Human Rights Council resolution S-2/1) to constitute a significant pattern of excessive, indiscriminate and disproportionate use of force.

Impact of armed conflict on older persons and persons with disabilities

27. As discussed in greater detail in other thematic reports to the Security Council, women and children continue to suffer extreme violence and hardship during conflict. Less frequently reported are the particular risks that conflict poses for older persons and persons with disabilities. Because of their limited mobility and reduced physical strength, older persons are less able to have access to assistance. They may be left behind to guard property, or abandoned in the chaos as other family members flee. Similarly, persons with disabilities are at heightened risk of injury or death if they are not assisted in seeking safety. They may have lost mobility devices such as wheelchairs, and the physical environment is often transformed by destruction. Support networks are often disrupted, leading to increased isolation and neglect. Older persons and persons with disabilities were among those unable to flee fighting in south Lebanon in 2006 and remained at particular risk of injury and death. Even when persons with disabilities reach settlements for the displaced, mobility remains problematic, limiting their access to services.

28. In recognition of such challenges, the recently adopted Convention on the Rights of Persons with Disabilities requires States parties to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of conflict. I encourage Member States to ratify the Convention and include information on such measures in their reports to the supervisory body to be established once the Convention enters into force. More immediately, national authorities and humanitarian actors must ensure systematic attention to older people and persons with disabilities in their efforts to protect and assist civilians in conflict.

Protection of journalists

29. Another issue of concern is the increasing number of journalists and media assistants killed or injured while reporting from areas of conflict. In 2006, and for

[5] See, for example, "Responding to Hezbollah attacks from Lebanon — issues of proportionality", Israeli Ministry of Foreign Affairs, 25 July 2006.

the fourth consecutive year, Iraq was reportedly the most dangerous country for the media, with 64 journalists and media assistants killed, the majority of them Iraqi nationals.[6] Another 43 were killed in Iraq during the first six months of 2007,[7] with fatalities also reported in Afghanistan, the Democratic Republic of the Congo, Haiti, the occupied Palestinian territory, Somalia and Sri Lanka. In some cases, fatalities result from excessive risk-taking, or from being caught in a crossfire. Others result from deliberate targeting by parties to conflict in order to deter or prevent reporting, particularly on abuses. The practice of embedding with a party to a conflict also puts journalists at close quarters with military objectives and may give the impression that they are combatants and thus legitimate targets.

30. Recognizing the urgency of this issue, the Council adopted resolution 1738 (2006), in which it called upon all parties to conflict to end attacks against journalists and media professionals and to comply fully with their international obligations. It urged States and all other parties to conflict to prevent violations of international humanitarian law against journalists and media professionals and, critically, to end impunity and prosecute those responsible for such violations. To move this issue forward, the Special Rapporteur on the right to freedom of opinion and expression has recommended preparing a comprehensive analysis of the issue with recommendations for strengthened protection. This would be an important step and should draw on the work of organizations with expertise in this area.

IV. Key challenges for the Council

31. As mentioned earlier, I see four key challenges of particular importance to us all and in regard to which the Council and Member States could take action to ensure more systematic and robust responses.

A. Ensuring access

32. Ensuring access is in some respects the critical challenge for the Council and Member States. Access is the fundamental prerequisite for humanitarian action and protection, and for millions of vulnerable people caught in conflict it is often the only hope and means of survival.

33. In accordance with international humanitarian law, parties to conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need. In its resolution 46/182, adopted in 1991, the General Assembly called upon States whose populations are in need of humanitarian assistance to facilitate the work of intergovernmental and non-governmental organizations in implementing such assistance, for which access to victims is essential. The Council has underlined the need for all parties concerned, including non-State actors and neighbouring States, to cooperate fully with the United Nations in providing safe, timely and unimpeded access to civilians in armed conflict. Frequently, however, we see that access is anything but safe, certainly not timely, and far from unhindered. The result is millions of people excluded from access to life-saving assistance and the minimal protection provided by the mere presence of humanitarian workers.

[6] Reporters without Borders, "Press freedom in 2006", 31 December 2006.

[7] http://www.newssafety.com/casualties/iraq.htm#2007, visited on 14 August 2007.

34. In Iraq, United Nations agencies have extremely limited access to over 4 million vulnerable civilians in central and southern governorates. In Somalia, humanitarian actors have heavily restricted access to 86 per cent of the identified vulnerable population of over 1 million people. An estimated 566,000 of the 4.1 million conflict-affected people in Darfur cannot be reached by agencies. In Afghanistan, 53 districts in five provinces in the south (excluding some provincial capitals) are largely inaccessible to humanitarian actors. In the Democratic Republic of the Congo, humanitarian actors have only partial and intermittent access to 12 million conflict-affected people. In eastern Myanmar, humanitarian actors have only partial or heavily restricted access to approximately 503,000 internally displaced persons. Aside from the implications for those in need, such as lack of food, shelter, health care and increased malnutrition and mortality rates, constraints on access also undermine the impact of assistance that can be provided, reduce the protective value of a humanitarian presence among vulnerable populations and lead to higher operational costs.

35. Constraints on, or denials of, access can take several forms. First, there are constraints imposed by the operating environment, such as destruction of infrastructure and ongoing fighting. Second, more pernicious constraints are attempts by parties to conflict to restrict or block access, thereby jeopardizing the lives of millions and prolonging their suffering. Third, and more pernicious still, are constraints resulting from deliberate attacks against humanitarian workers.

36. With regard to the first, in the Democratic Republic of the Congo, the absence of roads and airstrips in remote areas impedes access to populations in need. This is often compounded by ongoing fighting that effectively prevents populations from having access to or receiving assistance. The breakdown of law and order in conflict provides fertile ground for criminal acts motivated by financial gain, resulting in the looting of humanitarian supplies and assets. In Darfur, the disruption of chains of command resulting from the fragmentation of armed groups has led to increases in such acts.

37. Access may be restricted also by deliberately time-consuming bureaucratic procedures for importing humanitarian supplies, and restrictions or delays in issuing visas and travel permits for international staff. In Darfur, while the implementation of the joint communiqué has led to a decrease in bureaucratic constraints on humanitarian operations, belligerents continue to impose other types of restrictions and perpetrate attacks against humanitarian workers on the ground.

38. The arbitrary denial of access is a significant problem and an unacceptable practice. Humanitarian workers may be prevented from providing assistance because of the perceived political sympathies of the affected population. The Transitional Federal Government of Somalia has denied assistance to pockets of the displaced population on the grounds that family members are alleged to belong to terrorist groups. Furthermore, restrictions on freedom of movement severely impede the ability of those in need to reach services and relative safety, including abroad, or to be reached by humanitarian workers. In the occupied Palestinian territory, internal barriers, as well as heavy restrictions on cross-border movement of people and goods, compromise access to vital assistance. Access throughout the West Bank is restricted by 563 physical obstacles and is particularly difficult in areas under full Israeli control.

39. A particularly disturbing constraint results from deliberate attacks on humanitarian workers. Such attacks are prohibited by international humanitarian law and constitute war crimes. According to one report, between 1997 and 2005 the absolute number of major acts of violence committed against humanitarian workers nearly doubled.[8] National staff represent the majority of victims, reflecting the fact that in times of heightened insecurity, international staff rely increasingly on national staff and local partners to manage aid programmes, effectively shifting the burden of risk. In Darfur, attacks against humanitarian workers increased by 150 per cent from June 2006 to June 2007. So far this year, 8 humanitarian workers have been killed, 11 wounded and over 60 assaulted; 93 vehicles have been hijacked or stolen and over 102 staff abducted in the process; 60 aid convoys have been looted; and there have been 65 armed incursions into humanitarian premises. In Afghanistan, as of August 2007, 41 humanitarian convoys had been attacked or looted; 29 attacks on humanitarian facilities had been reported; and 69 humanitarian workers had been abducted, of whom 7 were killed. In all, 41 aid workers were killed during the first seven months of 2007.

40. Despite the serious nature of these crimes and their repercussions, insufficient attempts have been made to hold perpetrators accountable. In Sri Lanka, there is still little progress in the work of the Government-established commission investigating human rights abuses, including the murders of 17 staff of Action contre la faim who were killed in a single, abhorrent act in August 2006.

41. The Office for the Coordination of Humanitarian Affairs is developing a monitoring and reporting mechanism that will facilitate more in-depth analysis of the causes and consequences of access constraints. That analysis will be annexed to future reports on the protection of civilians and included in the regular briefings to the Council by the Emergency Relief Coordinator. Importantly, it will provide an opportunity for — and expectation of — concerted action from the Council in response to particularly grave situations, action that must ensure that those in need of life-saving assistance receive it and that those who provide it do so in a secure environment in which attacks against humanitarian workers are not tolerated. Possible actions include concerted advocacy and negotiation with warring parties for the establishment of:

(a) "Deconflicting" arrangements to agree upon routes and timing of humanitarian convoys and airlifts to avoid accidental strikes on humanitarian operations;

(b) High-level diplomacy to promote humanitarian corridors and days of tranquillity;

(c) The development of a standard moratorium on visa requirements and travel permits for humanitarian workers, and on customs duties and import restrictions on humanitarian goods and equipment. The moratorium could be activated upon the recommendation of the Emergency Relief Coordinator where there is a need for rapid and life-saving assistance.

42. Consideration should also be given to enhanced accountability for instances of grave denial of humanitarian access. For example, intentionally using starvation of

[8] A. Harmer et al., "Providing aid in insecure environments: trends in policy and operations", Humanitarian Policy Group, 23 September 2006.

civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding the delivery of relief supplies, in contravention of the Geneva Conventions, was recognized as a war crime in the Statute of the International Criminal Court. To date, this criminal dimension of the denial of access appears to have been overlooked, despite the fact it jeopardizes the lives of hundreds of thousands of persons. Greater efforts to highlight the normative framework governing humanitarian access and the consequences of its denial would be welcome. Consideration of such grave cases by the International Criminal Court could be an important step in this regard.

B. A more robust response to sexual violence

43. In no other area is our collective failure to ensure effective protection for civilians more apparent — and by its very nature more shameful — than in terms of the masses of women and girls, but also boys and men, whose lives are destroyed each year by sexual violence perpetrated in conflict.

44. Sexual violence, including rape, is a war crime and may, in some situations, be of such dimensions as to constitute a crime against humanity. Sexual violence has been used as a calculated method of warfare in places such as Bosnia and Herzegovina, Liberia, Rwanda, Sierra Leone and Somalia, and is currently practised in the Central African Republic, the Democratic Republic of the Congo and the Sudan, where its use by Janjaweed and Government soldiers was described by the International Commission of Inquiry on Darfur as widespread and systematic. As a method of warfare, sexual violence is aimed at brutalizing and instilling fear in the civilian population through acts of deliberate cruelty, weakening their resistance and resilience, through humiliation and shame, and destroying the social fabric of entire communities. Victims are often left with horrific physical and psychological scars and, worse still, may have contracted a sexually transmitted disease, including HIV and AIDS. In some cases, they are shunned and abandoned by their families and communities.

45. While such violence is not confined to the Democratic Republic of the Congo, the gruelling situation in the eastern provinces of Ituri and the Kivus epitomizes the devastating effect of sexual violence in conflict. The United Nations Special Rapporteur on violence against women notes that in South Kivu province alone, where 4,500 cases of sexual violence were recorded in the first six months of 2007, acts of rape and sexual slavery perpetrated by armed groups were aimed at the complete physical and psychological destruction of women, with implications for the entire society. Women were brutally gang-raped, often in front of their families and communities. In numerous cases, male relatives were forced at gunpoint to rape their own daughters, mothers or sisters. Frequently women were shot or stabbed in their genital organs, after being raped. Women who survived months of sexual enslavement were forced to eat excrement or the flesh of murdered relatives. In the same province, units of the Congolese army were reported to have targeted communities suspected of supporting militia groups and committed acts of gang rape and murder. Individual soldiers or police officers also committed such acts, considering themselves to be above the law. These are not random acts of violence in the theatre of war but a deliberate attempt to dehumanize and destroy entire communities.

46. In Equateur province, the police and army are reported to have responded to civil unrest with armed reprisals against civilians that involve torture and mass rape. The Panzi hospital in Bukavu, which specializes in treating victims of sexual violence, receives annually 3,500 women who suffer fistula and other severe genital injuries resulting from sexual violence. That is just one institution, in one province, in a conflict-affected country the size of Western Europe.

47. The perpetrators of sexual violence regularly go unpunished. Their crimes may go unreported because of shame or fear on the part of the victims; because of the absence of assistance or mechanisms for reporting such crimes; because of a lack of faith in reporting systems; or because the victims did not survive. It is believed that for every rape that is reported, as many as 10 to 20 may go unreported. In most conflict settings, though, impunity frequently prevails because of the lack of action by those with a duty to respond — a failure that denies justice to those affected and reinforces a climate in which violence of this nature is inexplicably considered normal.

48. The international community's revulsion towards sexual violence is clear, as demonstrated in General Assembly resolution 61/134 and Council resolutions 1325 (2000), 1674 (2006) and others. Evidently, though, more decisive and rigorous action is needed to bridge the gap between the rhetoric of those resolutions and the reality on the ground and to treat acts of sexual violence for what they are — despicable war crimes and crimes against humanity that must be punished. To do otherwise, to continue standing by, year after year, violates the obligation to punish such acts and belies the solemn commitment made at the 2005 World Summit to protect civilians.

49. First, at the national level, and in accordance with the obligation to search for and prosecute persons suspected of genocide, war crimes and crimes against humanity:

(a) States within whose jurisdiction acts of sexual violence amounting to these offences occur, or where perpetrators or victims are present, must investigate, prosecute and punish perpetrators. In the case of the armed forces and the police, this should include the commanders under whom they serve if the commanders failed to take measures to prevent the violations;

(b) Where necessary, States should:

(i) Enact new laws that criminalize sexual violence;

(ii) Review overly narrow rape laws;

(iii) Resolve conflicts between the application of statutory and customary laws;

(iv) Significantly improve access to justice for victims, including the possible establishment of ad hoc judicial arrangements for dealing with these crimes;

(v) Strengthen national and local investigatory and prosecutorial capacity.

50. Second, prevention and response activities by humanitarian actors must be strengthened and better coordinated. In addition to work undertaken within their respective mandates, 12 United Nations entities have formed United Nations Action against Sexual Violence in Conflict, which aims to amplify programming and advocacy, improve coordination and accountability and support national efforts to

prevent sexual violence and respond effectively to the needs of survivors. However, given the magnitude and complexity of the issue, there is still a need to establish a clear and dedicated "institutional home" within the United Nations that would:

(a) Coordinate the activities of agencies involved in this area, including systematic information collection and coordinated needs assessments;

(b) Ensure the provision of expertise and support to the field;

(c) Develop system-wide advocacy on the issue;

(d) Act as repository of best practices for prevention of and response to sexual violence.

51. In a related context, combating sexual violence committed by peacekeeping personnel and humanitarian workers remains an important challenge within the United Nations and for troop- and police-contributing countries. In July 2007, the General Assembly adopted amendments to a model memorandum of understanding for troop and police contributors participating in peacekeeping missions (see resolution 61/291). It assigns contributing countries the responsibility to investigate sexual exploitation and abuse by members of their national contingents and grants them exclusive jurisdiction over any offences committed. Having recognized this responsibility, Member States must fully discharge their duties and ensure that the United Nations policy of zero-tolerance is uniformly applied.

C. A more effective response to housing, land and property issues

52. Another critically important challenge is the need to more effectively address housing, land and real property issues, which are often the origins of, or result from, conflict and which are therefore inextricably linked to the achievement and consolidation of lasting peace and the prevention of future violence.

53. The majority of internal conflicts in recent memory have involved underlying disputes over housing, land or property. In places such as Côte d'Ivoire, Darfur, the Kivus of the Democratic Republic of the Congo, Liberia and Timor-Leste, conflict was driven to varying degrees by disputes over land resulting from such factors as increased demographic pressure, scarcity of resources, agricultural transformation, exploitation of natural resources, insecurity of tenure and inequalities in land distribution (in particular along ethnic, religious or other divides).

54. Housing, land and property disputes and problems are also an almost inevitable consequence of armed conflict, as people flee their homes and lands in search of safety, or are forced to flee, in particular through ethnic cleansing or sectarian violence, as currently plagues Iraq. Such situations invariably give rise to complex issues that, if not prevented in the first place, must be addressed later if any future peace is to be sustained and further violence prevented. These include forced evictions; property transactions made under duress; illegal destruction or appropriation and occupation of abandoned property; the illegal confiscation of land; discriminatory application of abandonment laws; and the loss or deliberate destruction of documentary evidence of ownership. Such problems are further compounded by the application of inheritance laws that deny women and minors the right to inherit, own or use land and property.

55. A critically important step towards resolving such issues is publicly upholding and ensuring the right to safe and unimpeded return for refugees and internally displaced persons from the very moment they become displaced. Ensuring the right to return constitutes a categorical rejection of the gains of ethnic cleansing and sectarian violence and offers some measure of justice to those displaced from their homes and land, thereby removing a source of possible future tension and conflict. After four years of conflict and continuing displacement in Darfur, reaching common agreement on land tenure and compensation for the loss of property has emerged as a key element of sustainable peace. A recent report on Southern Sudan observes that the arrival of returnees in South Kordofan exacerbated long-standing tensions between different land users, with killings and injuries related to land conflicts constituting the single largest risk to returnees and local communities.[9]

56. The Council has long recognized the importance of safe and unimpeded return for refugees and internally displaced persons, as demonstrated in resolutions on the occupied Palestinian territory, Cyprus, the former Yugoslavia, Croatia, Georgia, Kosovo, Timor-Leste and the Sudan. In some cases, such as in Bosnia and Herzegovina, it has also condemned the wrongful appropriation and destruction of homes and property. However, for the reasons cited above, such recognition of the right to return must be applied by the Council with more systematic regularity. It must, moreover, be accompanied by increased attention to its practical implementation, including the need for a more comprehensive, systematic and consistent United Nations-wide approach to housing, land and property issues in both conflict and post-conflict settings.

57. Some United Nations peace operations have been directly involved in addressing these issues. The United Nations Interim Administration Mission in Kosovo administered and managed the Housing and Property Directorate and Claims Commission, initially established by the United Nations Human Settlements Programme, which has decided over 27,000 claims as of October 2007. The Land and Property Unit within the United Nations Transitional Authority in East Timor developed proposals for institutionally addressing property questions. Grievances that were left unaddressed are considered to have contributed to the recent political violence in Timor-Leste. By contrast, the United Nations Transitional Authority in Cambodia and UNAMA have not systematically addressed property issues. With regard to the example of South Kordofan above, the report asserts that despite the risk posed by conflict over land, the issue has not received adequate attention or analysis within United Nations reintegration efforts.

58. When peace operations do not engage in these activities, it does not necessarily mean that the issues are left unaddressed. In Afghanistan, the Office of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organizations engaged in activities to promote and assist restitution, including the provision of legal aid to returnees. In Burundi, the Peacebuilding Fund has provided, through UNHCR, initial financial support to establish a national property claims mechanism.

[9] S. Pantuliano, M. Buchanan-Smith and P. Murphy, "The long road home: opportunities and obstacles to the reintegration of IDPs and refugees returning to Southern Sudan and the three areas", Humanitarian Policy Group, August 2007.

59. Important though these efforts are, they do not constitute an approach that ensures consistent, systematic and comprehensive treatment of housing, land and property issues. Such an approach should include:

(a) Preventive and deterrent actions, such as the strategic deployment of peacekeeping troops to prevent evictions and the illegal appropriation of land and property, and the identification and prosecution by national courts or the International Criminal Court of those criminally responsible for the illegal appropriation or destruction of land and property;

(b) Preparatory actions, such as the early identification and registration of land and property abandoned by internally displaced persons and refugees to facilitate restitution or, where necessary, compensation, and the issuance of ownership documentation where this has been lost or destroyed;

(c) Restorative actions, such as the inclusion of the right to return and restitution of housing, land or property in all future peace agreements and all relevant Council resolutions, and the inclusion of housing, land and property issues as an integral part of future peacekeeping and other relevant missions, with provisions for dedicated, expert capacity to address these issues.

D. Eliminating the humanitarian impact of cluster munitions

60. A final key challenge is the need to eliminate the horrendous humanitarian impact of cluster munitions, characterized by the maiming and killing of civilians, particularly children, even after conflict has ended; thousands unable to return to their homes; and devastated livelihoods as fields are rendered unusable, harvests destroyed and sources of income lost for a generation.

61. The international community has become increasingly concerned about the humanitarian impact of cluster munitions, to a large degree because of the injuries, fatalities and widespread contamination of land resulting from their large-scale use by Israeli forces in Lebanon in 2006. However, Lebanon is only the latest in a line of countries to be left facing the severe humanitarian and development consequences of cluster munitions. Cluster munitions have been used in at least 23 countries and territories, including Afghanistan, Cambodia, Chad, Eritrea, Ethiopia, Iraq and Kosovo. There are also concerns about the further proliferation of cluster munitions through their future availability to, and use by, non-State armed groups. It was reported that in some instances cluster munitions were used by Hizbullah against Israel in 2006.

62. Cluster munitions are designed to have a large-area effect and can cause immediate death and injury to civilians and damage civilian objects in areas beyond the military objective. Moreover, the failure of some sub-munitions to detonate on impact creates a serious hazard that can endanger civilians for years or even decades. Children are at particular risk from unexploded sub-munitions, in part because they are attracted to their unusual shapes and colours. Children accounted for the majority of cluster-munition casualties in Cambodia between 1998 and 2007 and in Kosovo in 1999.[10] In south Lebanon there are still hundreds of thousands of unexploded sub-munitions from the conflict in 2006.

[10] *Circle of Impact*, Handicap International, 2007.

63. Cluster munitions victimize entire communities, not just individuals. The scale of the problem of unexploded remnants of war was a major factor preventing 200,000 people from returning to their homes in south Lebanon last year.[11] Access was also denied to 26 per cent of arable land.[12] With half of the working population in the south relying on agriculture, the loss of the harvest had a profound impact.[13] In the Lao People's Democratic Republic, 25 per cent of the country's land surface remains contaminated over 30 years after the use of cluster munitions.[14] Farmers, already under economic pressure, sometimes feel they have no choice but to return to their land even though it has not been cleared. Digging incidents alone have resulted in over 1,000 casualties.[10] The presence of unexploded sub-munitions over large areas also threatens the safety of humanitarian staff and peacekeepers.

64. Concerted efforts are required to end the use of cluster munitions. In November 2007, the Meeting of States Parties to the Convention on Certain Conventional Weapons will discuss a recommendation on how to address the humanitarian impact of cluster munitions, including the possibility of a new instrument. In February 2007, Norway initiated a separate process to adopt by the end of 2008 a binding instrument that will prohibit cluster munitions that cause unacceptable harm to civilians. To date, 80 States have participated in the Oslo process, as it is called, including 20 that are not parties to the Convention.

65. I applaud and encourage all endeavours to reduce, and ultimately eliminate, the impact of cluster munitions on civilians. I welcome the Oslo and Convention on Certain Conventional Weapons processes, which are complementary, mutually reinforcing and deserving of Member State support. To this end:

(a) I call on all Member States to address the horrendous humanitarian, human rights and development impact of cluster munitions by concluding a treaty that:

(i) Prohibits the use, development, production, stockpiling and transfer of cluster munitions that cause unacceptable harm to civilians;

(ii) Requires the destruction of current stockpiles of those munitions and provides for clearance, risk education and other risk mitigation activities, victim assistance, assistance and cooperation between States, and compliance and transparency measures;

(b) Until such a treaty is adopted, I urge all Member States to take domestic measures to immediately freeze the use and transfer of all cluster munitions.

[11] http://www.irinnews.org/report.aspx?reportid=61913.

[12] Statement by Chris Clark, Programme Manager for the United Nations Mine Action Programme in South Lebanon, to the International Committee of the Red Cross Expert Meeting on Humanitarian, Military, Technical and Legal Challenges of Cluster Munitions, 18-20 April 2007.

[13] http://www.fao.org/newsroom/en/news/2007/1000647/index.html, 8 August 2007.

[14] Statement by the United Nations Development Programme to the Group of Governmental Experts of States Parties to the Convention on Certain Conventional Weapons, June 2007.

V. Conclusions and actions

66. As I stated at the beginning of the present report, the protection of civilians in armed conflict is, and must remain, an absolute priority. The Security Council's continued consideration of this agenda item is an important indication of its commitment, as was the adoption of resolution 1674 (2006). A critical and consequential next step towards operationalizing that resolution and ensuring action that has a tangible impact on the ground is more systematic attention to the concerns and recommendations made in this and previous reports on the protection of civilians in the daily deliberations of the Council. To this end, I recommend that the Council consider the following actions:

Action one
Conduct of hostilities

(a) Systematically including a requirement for strict compliance with international humanitarian law, as well as human rights law, in all resolutions authorizing United Nations peacekeeping and other relevant missions;

(b) Requesting reports from United Nations peacekeeping and other relevant missions on steps taken to ensure the protection of civilians in the conduct of hostilities;

Action two
Sexual violence

(c) Requesting the systematic provision of comprehensive information on sexual violence as a specific annex to all reports to the Security Council on peacekeeping operations and other relevant missions;

(d) Referring situations of grave incidents of rape and other forms of sexual violence to the International Criminal Court and/or considering the imposition of targeted sanctions against States or non-State armed groups that perpetrate or support such crimes;

(e) In situations where impunity prevails and local justice mechanisms are overwhelmed, such as in the Democratic Republic of the Congo, supporting the establishment of ad hoc judicial arrangements to address sexual violence;

Action three
Access

(f) Ensuring that United Nations peacekeeping and other relevant missions are mandated to contribute, as may be requested and within capabilities, to the creation of security conditions that enable the provision of humanitarian assistance;

(g) Having the Emergency Relief Coordinator systematically bring to the Council's attention situations where serious access concerns exist, including through the biannual briefings and as an annex to the Secretary-General's reports on the protection of civilians;

(h) Holding situation-specific debates on access and, where appropriate, considering the referral of grave instances of denial of access, as well as situations involving attacks against humanitarian workers, to the International Criminal Court;

Action four
Housing, land and property rights

(i) Systematically including language in all relevant resolutions on the right of displaced persons and refugees to return to their homes and places of origin and on non-acceptance of the results of ethnic cleansing or sectarian violence;

(j) Promoting the establishment of effective and appropriate mechanisms at the national level for addressing housing, land and property issues;

(k) Mandating United Nations peacekeeping and other relevant missions to prevent the illegal appropriation or confiscation of land and property, to identify and register land and property abandoned by refugees and displaced persons and to issue ownership documentation where this has been lost or destroyed;

(l) Convening an Arria-formula meeting with relevant actors to further explore the content of a more consistent, systematic and comprehensive United Nations-wide approach to housing, land and property issues;

Action five
Security Council working group on the protection of civilians

(m) Establishing, consistent with resolution 1674 (2006), a dedicated, expert-level working group to facilitate the systematic and sustained consideration and analysis of protection concerns, and ensuring consistent application of the aide-memoire for the consideration of issues pertaining to the protection of civilians[15] in Council deliberations on the mandates of United Nations peacekeeping and other relevant missions, draft resolutions and presidential statements, and in Council missions.

67. Incorporating these actions into the Council's efforts to manage and address conflict will, I believe, contribute to a more systematic and effective approach to, and significant progress in, ensuring the protection of civilians. That progress must be measured not by what we declare, or recommend, or resolve to do, but by the impact of our declarations, recommendations and resolutions where and for whom it matters most — on the ground, for the millions of civilians who are at risk of, or whose lives are being torn apart by, the horrors and indignities of conflict.

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[15] S/PRST/2002/6, annex.